Supreme Court, U.S.
FILED
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No. 95-191

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

O'HARE TRUCK SERVICE, INC. and JOHN A. GRATZIANNA,

Petitioners,

v.

CITY OF NORTHLAKE, MAYOR REID PAXSON, and POLICE CHIEF SEYMOUR SAPOZNIK,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JULY 31, 1995
CERTIORARI GRANTED DECEMBER 8, 1995

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U.S. District Court
Northern District of Illinois (Chicago)

CIVIL DOCKET FOR CASE #: 93-CV-5860

O'Hare Truck Svc Inc, et al v. Northlake, Cty of, et al
Filed: 09/24/93
Assigned to: Hon. Milton I. Shadur
Jury Demand: Both
Demand: $0,000
Nature of Suit: 440
Jurisdiction: Federal question
Lead Docket: None
Dkt# in other court: None

Cause: 42:1983 Civil Rights Act

9/24/93	1	COMPLAINT; jury demand - civil cover sheet - Appearance(s) of Thomas C. Crooks as attorney(s) for plaintiff with Rule 39 affidavit (three original and three copies summons(es) (Documents: 1-1 through 1-4) (is) [Entry date 09/27/93]
9/29/93	2	MEMORANDUM OPINION AND ORDER (is) [Entry date 09/30/93]
9/29/93	3	MINUTE ORDER of 9/29/93 by Hon. Milton I. Shadur: Memorandum opinion and order entered. Accordingly, the words "official and" are stricken from both complaint paragraph 4 and 5. Mailed notice (is) [Entry date 09/30/93]
10/22/93	4	MOTION by defendants to vacate any and all

defaults heretofore entered against them, for leave to file instanter, their appearance and, for a 28 day extension of time within which to answer or otherwise plead to plaintiffs' complaint; Notice of motion (is) [Entry date 10/25/93]

10/22/93 5 MINUTE ORDER of 10/22/93 by Hon. Milton I. Shadur: Status hearing set for 12/07/93 at 9:00 a.m. Leave is granted to Gary Feiereisel, Frank Kasbohm, Matthew VanCleave and Corey Grauer to file their appearances as counsel on behalf of defendants. Granting defendants' motion to vacate any and all defaults [4-1], for leave to file appearance [4-2] and for an extension of time to November 25, 1993 within which to answer or otherwise plead [4-3]. Mailed notice (is) [Entry date 10/25/93]

12/8/93 12 MEMORANDUM, OPINION, AND ORDER (tlm) [Entry date 01/07/94]

12/8/93 13 MINUTE ORDER of 12/8/93 by Hon. Milton I. Shadur: Plaintiffs' memorandum identifying relevant authority, or plaintiffs' amended complaint is due by 12/28/93. Mailed notice (tlm)[Entry date 01/07/94]

12/10/93 14 MOTION by defendants for leave to file response to compliant [sic] instanter. (tlm) [Entry date 01/07/94]

12/10/93 15 MOTION by defendants to dismiss for lack of jurisdiction. (tlm) [Entry date 010/94]

12/10/93 16 MOTION by defendants for summary judgment. (tlm) [Entry date 01/07/94]

12/10/93 17 NOTICE OF MOTION by defendants regarding motion for leave to file response to complaint instanter [14-1], regarding motion to dismiss for lack of jurisdiction [15-1], regarding motion for summary judgment [16-1] (tlm) [Entry date 01/07/94]

12/10/93 18 MINUTE ORDER of 12/10/93 by Hon. Milton I. Shadur: Granting defendants' motion for leave to file 12(b)(6) motion to dismiss and motion for summary judgment. [14-1] No notice (tlm) [Entry date 01/07/94]

12/30/93 19 MOTION by plaintiff for leave to file first amended complaint and memorandum of law. (tlm) [Entry date 01/07/94]

12/30/93 20 FIRST AMENDED COMPLAINT [1-1] by plaintiff; jury demand (tlm) [Entry date 01/07/94]

12/30/93 21 MEMORANDUM of law by defendants [sic][1] regarding the order of 12/08/93 (Exhibits). (tlm) [Entry date 01/07/94]

12/30/93 22 NOTICE OF FILING by defendants regarding motion for leave to file first amended complaint and memorandum of law [19-1], complaint [20-1] and memorandum [20-1]. (tlm)

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[1] This docket entry is erroneous. The memorandum was submitted by the plaintiffs, not the defendants.

[Entry date 01/07/94]

1/3/94 23 MEMORANDUM, OPINION, AND ORDER dismissing case (Attachment). (tlm) [Entry date 01/07/94] [Edit date 04/01/94]

1/3/94 24 MINUTE ORDER of 1/3/94 by Hon. Milton I. Shadur: Memorandum Opinion and Order entered. Accordingly, plaintiffs' motion for leave to file first amended complaint and memorandum of law [19-1] is granted. This action is dismissed with prejudice. terminating [sic] case No notice (tlm) [Entry date 01/07/94]

1/3/94 25 ENTERED JUDGMENT (tlm) [Entry date 01/07/94]

1/28/94 26 NOTICE OF APPEAL by John A. Gratzianna, O'Hare Truck Svc Inc from motion minute order [24-2] (Fee Paid) (pw) [Entry date 01/31/94]

1/28/94 27 LETTER regarding jurisdictional statement acknowledged by John A. Gratzianna, O'Hare Truck Svc Inc. (pw) [Entry date 01/31/94]

2/11/94 -- TRANSMITTED 02/11/94 complete record on appeal to USCA for the 7th Circuit consisting of transmittal letter, certificate, one volume of pleadings and a list of documents. (gm) [Entry date 02/14/94]

3/14/95 30 LETTER from the USCA for the 7th Circuit Court informing the Clerk's Office that the

record on appeal, regarding appeal [26-1] will be forwarded at a later date (94-1222). (ll) [Entry date 03/28/95)

3/14/95 31 BILL OF COSTS submitted by the United States Court of Appeals (94-1222). (ll) [Entry date 03/28/95]

3/14/95 32 CERTIFIED COPY of order from the USCA for the 7th Circuit entered 02/01/95: It is ordered and adjudged Affirming the District Court is Affirmed, with costs, in accordance with the decision of this court entered on this date (94-1222). (ll) [Entry date 03/28/95]

3/14/95 33 OPINION from the USCA for the 7th Circuit argued 09/12/94; decided 02/10/95. appeal [26-1] (94-1222). (ll) [Entry date 03/28/95]

GENERAL DOCKET
U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT

94-1222

Nsuit: 3440 Oth Civil Rights-Fed. Question
O'Hare Truck Service, et al v. City Northlake, et al
Appeal from: United States District Court
civil - private - none
Fee status: paid

Case Associations

Prior cases:
None
Current cases:
None

Lower Court Information

Northern District of Illinois, Eastern Division:
93 C 5860
Court Reporter: J. Andrews, Court Reporter
Ordering Judge: Milton I. Shadur, Judge
Date Filed: 9/24/93
Date order/judgment: 1/3/94
Date NOA filed: 1/28/94

Caption

O'HARE TRUCK SERVICE, INCORPORATED and
JOHN A. GRATZIANNA,
Plaintiffs - Appellants

v.

CITY OF NORTHLAKE, an Illinois Municipal Corporation and Body Politic, REID PAXSON, Mayor and SEYMOUR SAPOZNIK, Police Chief,
Defendants - Appellees

Counsel Information

O'HARE TRUCK SERVICE, INCORPORATED Plaintiff - Appellant	Thomas C. Crooks 312/641-2260 Suite 535 [COR LD NTC ret] 70 W. Madison Street Three First National Plaza Chicago, IL 60602 USA Michael P. McGovern 615/523-9191 [COR LD NTC ret] 709 Market Street Knoxville, TN 37902 USA
JOHN A. GRATZIANNA Plaintiff - Appellant	Thomas C. Crooks (see above) [COR LD NTC ret] Michael P. McGovern (see above) [COR LD NTC ret]

v.

CITY OF NORTHLAKE, an Illinois Municipal Corporation and Body Politic Defendant - Appellee	Matthew E. VanCleave 312/782-9255 Suite 3400 [COR LD NTC tr] Gary Feiereisel 312/782-9255 Suite 3400 [COR LD NTC ret] Frank Kasbohm 312/782-9255 Suite 3400 [COR LD NTC ret] FRATERRIGO, BEST & BERANEK 55 W. Monroe Street Chicago, IL 60603 USA
SEYMOUR SAPOZNIK, Police Chief Defendant - Appellee	Matthew E. VanCleave (see above) [COR LD NTC tr] Gary Feiereisel (see above) [COR LD NTC ret] Frank Kasbohm (see above) [COR LD NTC ret]
REID PAXSON, Mayor Defendant - Appellee	Matthew E. VanCleave (see above) [COR LD NTC tr] Gary Feiereisel

	(see above) [COR LD NTC ret] Frank Kasbohm (see above) [COR LD NTC ret]

1/31/94	Private civil case docketed. [94-1222] [570179-1] Appearance form due on 3/24/94 for Frank Kasbohm, for Gary Feiereisel, for Corey H. Grauer, for Matthew E. VanCleave, for Thomas C. Crooks. Transcript information sheet due 2/10/94 for Thomas C. Crooks. Appellant's brief due 3/14/94 for O'Hare Truck Service, for John A. Gratzianna. Jurisdictional statement due 2/4/94 for O'Hare Truck Service, for John A. gratzianna. (carl)
2/4/94	Filed Appellant O'Hare Truck Service, appellant John A. Gratzianna jurisdictional statement. [94-1222] [570179-1] (patb)
2/11/94	Original record on appeal filed. Contents of record: 1 vol. pleadings; . [94-1222] [574541-1] (odea)
2/14/94	Filed Appellee City Northlake, Appellee Seymour Sapoznik, Appellee Reid Paxson jurisdictional statement. [94-1222] [574586-1] (chuc)
4/22/94	Filed 15c appellant's brief by O'Hare Truck Service, John A. Gratzianna. [94-1222] [597508-1] (chry)
5/23/94	Filed motion by Appellee City Northlake,

Appellee Seymour Sapoznik, Appellee Reid Paxson for sanctions against appellants. [607981-1] [94-1222] (chry)

5/23/94 Filed 15c appellee's brief by city Northlake, Seymour Sapoznik, Reid Paxson. [94-1222] [608001-1] (chry)

5/25/94 ORDER: Filed clerk's notice to Appellant O'Hare Truck Service, Appellant John A. Gratzianna to file a response to MOTION FOR SANCTIONS filed 5/23/94. [608035-1] am [94-1222] Response due 6/3/94 for John A. Gratzianna, for O'Hare Truck Service (chry)

6/3/94 Filed Appellant O'Hare Truck Service, Appellant John A. Gratzianna response to Appellee City Northlake, Appellee Seymour Sapoznik, Appellee Reid Paxson motion for sanctions. [611384-1] Document [608035-1] [94-1222][611384-1] (chr)

6/6/94 Filed 15c appellant's reply brief by O'Hare Truck Service, John A. Gratzianna [94-1222] [611433-1] (chry)

6/16/94 IT IS ORDERED that the following motion(s) and/or document(s) shall be taken with the case for determination by the merits panel: Motion for sanctions and the response thereto. [614441-1] am [94-1222] (carl)

2/10/95 Filed opinion of the court by Judge Kanne. AFFIRMED. Lay, Easterbrook, Kanne. [94-1222] [570179-1] (jenp)

2/10/95 ORDER: Final judgment filed per opinion. With costs: y. [94-1222] [693147-1] (jenp)

2/13/95 Filed motion by Appellees City Northlake, Seymour Sapoznik and Reid Paxson to expedite ruling on Motion for Sanctions filed 5/23/94. [694214-1] [94-1222] (juli)

2/17/95 Filed Appellee City Northlake, Appellee Seymour Sapoznik, Appellee Reid Paxson Bill of costs in the amount of $230.70. [94-1222] [570179-1] (fran)

2/23/95 ORDER issued DENYING motion to expedite ruling on the appellees' motion for sanctions which was taken with the case. Sanctions in this appeal are not proper. [694214-1] AM [94-1222] (juli)

2/24/95 Filed 15c Petition for Rehearing by appellant John a. Gratzianna, appellant O'Hare Truck Service. Dist. [94-1222] [647824-1] (jimm)

3/3/95 ORDER: Appellant John a. Gratzianna, Appellant O'Hare Truck Service Petition for Rehearing is DENIED. [94-1222] [697824-1] (jimm)

3/13/95 MANDATE ISSUED WITH BILL OF COSTS IN THE AMOUNT OF $230.70. RECORD ON APPEAL TO BE RETURNED LATER. (Contents to be returned: 1 vol. pleadings.) [94-1222] [694214-1] (jimm)

4/4/95 ORDER: The opinion of this Court issued on

February 10, 1995 is corrected follows: Page 7, footnote 4, line 3, "Miller" should be replaced with "Morris". [94-1222- [570179-1] (jimm)

6/1/95 Notice from the Supreme Court that a motion for extension of time to file a Petition for Writ of Certiorari has been GRANTED, extending such time to 7/31/95. [570179-1] [94-1222] (patb)

8/7/95 Filed notice from the Supreme Court of the filing of a Petition for Writ of Certiorari. Supreme Court Case No.: 95-191. [94-1222] [750202-1] (jame)

12/15/95 Filed order from the Supreme Court GRANTING the Petition for Writ of Certiorari. Supreme Court Case No.: 95-191. The petitioner's brief is to be filed with the Clerk and served upon opposing counsel on or before 3:00 p.m., Friday, January 19, 1996. The respondents' brief is to be filed with the Clerk and served upon opposing counsel on or before 3:00 p.m., Friday, February 16, 1996. Rule 29.2 does not apply. [94-1222] [788485-1] (elea)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

O'HARE TRUCK SERVICE, INC., and JOHN A. GRATZIANNA,	)	
Plaintiffs,	)	NO. 93 C 5860
vs.	)	JURY DEMANDED
CITY OF NORTHLAKE, an Illinois Municipal Corporation and Body Politic, MAYOR REID PAXSON, and POLICE CHIEF SEYMOUR SAPOZNIK,	)	JUDGE SHADUR
Defendants.	)	

COMPLAINT

Now come the plaintiffs, O'Hare Truck Service, Inc. (hereinafter "O'Hare") and John A. Gratzianna and complain of the defendants, City of Northlake (hereinafter "Northlake"), Mayor Reid Paxson (hereinafter "Paxson"), Police Chief Seymour Sapoznik (hereinafter "Sapoznik") as follows:

JURISDICTION AND VENUE

1. This action is brought pursuant to 42 U.S.C. Section 1983 in that plaintiff has been deprived of his rights

secured by the First and Fourteenth Amendments to the United States Constitution, to wit, freedom of speech and due process of law. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sections 1331, 1334 and 2201. Venue lies in the district court for the Northern District of Illinois pursuant to 28 U.S.C. Section 1391, because all relevant acts occurred within this district.

PARTIES

2. The plaintiff, O'Hare Truck Service, Inc. is an Illinois corporation with its principal place of business in the City of Northlake, Cook County, Illinois. O'Hare Truck Service, Inc., in addition to other services, provides towing services at the request of municipalities throughout Cook and DuPage counties. O'Hare Truck Service, Inc. is owned and operated by plaintiff John A. Gratzianna.

3. The City of Northlake is a duly constituted municipal corporation and body politic, located in Cook County, Illinois.

4. Paxson is, at all relevant times herein, the Mayor of the City of Northlake and its principal policy maker. He is sued in his official and individual capacity.

5. Sapoznik is, at all relevant times herein, the chief of Police of the City of Northlake. He gained and maintains his position as Chief of Police by appointment of defendant Paxson. He is sued in his official and individual capacity.

COUNT I - FREEDOM OF SPEECH

6. The plaintiffs provide towing services to municipalities. When a need arises for the towing of a vehicle, as a result of an accident, mechanical breakdown, abandonment or other reason, plaintiff is contacted by the municipality in which the vehicle is located and asked to provide towing services. The plaintiffs earn a substantial part of their incomes from fees paid by municipalities and private individuals as a result of requests for towing services by various municipalities.

7. In order to procure towing services under the circumstances described above, the Northlake Police Department has maintained and continues to maintain a towing rotation list (hereinafter "rotation list"). When the need for towing services arises in Northlake the police department contacts the towing service which is next in line on the rotation

list and requests towing services.

8. It has been the policy and practice of Northlake and the Northlake Police Department since 1965 and before to request towing services from the rotation list.

9. The plaintiff O'Hare has been on the Northlake rotation list since 1965 and has provided towing services at the request of Northlake since 1965 as a result of its placement on the rotation list.

10. In 1993 defendant Paxson ran for reelection to the position of Mayor of Northlake.

11. Although plaintiff John A. Gratzianna was solicited for campaign funds by Paxson's campaign committee, he refused to contribute to Paxson's reelection campaign.

12. Instead, John A. Gratzianna openly supported Paxson's opponent for the office of Mayor. Campaign posters for Paxson's opponent were displayed at plaintiff O'Hare's place of business.

13. In retaliation for the activities described in paragraphs 11 and 12, defendant Sapoznik, upon information and belief, at the direction of defendant Paxson, removed plaintiff O'Hare from the Northlake rotation list on or about

July 8, 1993.

14. As a direct and proximate result of defendants' removal of plaintiff O'Hare from the towing rotation list the plaintiffs have lost substantial income.

15. At all relevant times herein it has been the policy and practice of Northlake, as set by defendant Paxson, to use the powers and authority of Northlake to retaliate against political opponents of defendant Paxson.

16. The actions of defendants Paxson and Sapoznik as described in paragraph 13 occurred in conformance with and as a result of the policy and practice of Northlake as described in paragraph 15.

17. As a direct and proximate result of the defendants' removal of plaintiff O'Hare from the towing rotation list the plaintiffs have suffered a chilling effect upon the exercise of their constitutional right of freedom of speech and have suffered harm and injury.

18. The actions of the defendants as described herein were taken intentionally and with callous indifference to plaintiffs' federal constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs prays that this court will grant the following relief:

A. A preliminary and permanent injunction restraining the defendants from continuing to violate plaintiffs' federally protected rights and ordering plaintiff O'Hare's return to the Northlake tow rotation list;

B. A declaratory judgment stating that defendants have violated plaintiffs' federally protected rights;

C. Judgment for compensatory damages in favor of the plaintiffs and against the defendants in an amount to be set by the jury in the matter;

D. Judgment for punitive damages in favor of the plaintiffs and against defendants Paxson and Sapoznik in an amount to be set by the jury in this matter;

E. An award for reasonable costs and attorney's fees as authorized by 42 U.S.C. Section 1988;

F. For such other relief as this court deems just.

COUNT II - DUE PROCESS OF LAW

19. As and for paragraph 19 of Count II, the plaintiffs reallege and incorporate the allegations set forth in paragraphs 1 through 18 as if fully set forth here.

20. Despite a request from the plaintiffs, the defendants have at no time given any reason for the removal of plaintiff O'Hare from the tow rotation list.

21. The plaintiffs were not provided notice of O'Hare's removal from the tow rotation list; the plaintiffs were not provided an opportunity to object to O'Hare's removal from the tow rotation list; the plaintiffs were not provided a hearing at which to contest O'Hare's removal from the tow rotation list.

22. The plaintiffs had a property interest in O'Hare remaining on the tow rotation list and, therefore, had a right to due process of law protected by the fourteenth amendment to the U.S. Constitution, prior to its removal from the rotation list.

23. The plaintiffs were denied their right to due process of law when defendants removed O'Hare from the tow rotation list without notice and an opportunity to object as described in paragraphs 20 and 21.

24. The actions of the defendants in denying plaintiffs' rights to due process of law were taken intentionally

and with callous indifference to plaintiffs; federal constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs prays that this court will grant the following relief:

A. A preliminary and permanent injunction ordering plaintiff O'Hare's return to the Northlake tow rotation list;

B. A declaratory judgment stating that defendants have violated plaintiffs' federally protected rights;

C. Judgment for compensatory damages in favor of the plaintiffs and against the defendants in an amount to be set by the jury in this matter;

D. Judgment for punitive damages in favor of the plaintiffs and against defendants Paxson and Sapoznik in an amount to be set by the jury in this matter;

E. An award for reasonable costs and attorney's fees as authorized by 42 U.S.C. Section 1988;

F. For such other relief as this court deems just.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, plaintiffs demand trial by jury.

Respectfully submitted,

_____

Thomas C. Crooks
Attorney for the Plaintiffs

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Three First National Plaza
Suite 535
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(312) 641-2260

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

O'HARE TRUCK SERVICE, INC. and JOHN A. GRATZIANNA,	)	
Plaintiffs,	)	No. 93 C 5860
v.	)	Judge Shadur
CITY OF NORTHLAKE, MAYOR REID PAXSON and POLICE CHIEF SEYMOUR SAPZONIK,	)	Magistrate Judge Gottschall
Defendants.	)	

12(b)(6) MOTION TO DISMISS

NOW COME the defendants, CITY OF NORTHLAKE, REID PAXSON and SEYMOUR SAPOZNIK, by and through their attorneys, FRATERRIGO, BEST & BERANEK, and respectfully request dismissal with prejudice of plaintiffs' Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). In support thereof, defendants state as follows:

1. Plaintiffs allege a First Amendment claim in count I and a due process claim in count II arising from termination of plaintiffs' towing services by the CITY OF

NORTHLAKE. Plaintiffs allege termination of towing services was in retaliation for plaintiffs' refusal to contribute to MAYOR REID PAXSON's re-election campaign.

2. A nearly identical theory of recovery was rejected in Downtown Auto Parks, Inc. v. City of Milwaukee, 938 F.2d 705 (7th Cir. 1991). In that case, plaintiff alleged First Amendment and due process violations as a result of the City of Milwaukee refusing to extend its leases to operate City parking lots. Plaintiff claimed the City's refusal to extend leases was in retaliation for plaintiffs' lobbying efforts against legislation proposed by the City of Milwaukee.

3. With respect to plaintiff's First Amendment claim, the court stated simply that First Amendment protection does not extend to independent contractors whose bids for public contracts are rejected on the basis of political views.

4. With respect to the due process claim asserted, the Seventh Circuit noted that the threshold requirement is a claim for deprivation of liberty or property. In order to have a property interest, there must be more than a unilateral expectation of it. There must be a legitimate claim of entitlement to it. Property interests are created and their dimen-

sions are defined by existing rules or understandings that stem from an independent source, such as state law. Downtown Auto Parks had a unilateral expectation of renewal of the leases. This was because the City had discretion to award the leases to others. Similarly, the Complaint acknowledges that NORTHLAKE had discretion to award towing contracts to other contractors, by reason of the list of contractors mentioned in the Complaint.

5. The result in Downtown Auto Parks, requires dismissal of plaintiffs' cause of action here.

6. To the extent the Complaint seeks preliminary and permanent injunctive relief, even if the Motion to Dismiss is denied, plaintiffs are still not entitled to injunctive relief. There is no showing that plaintiffs have no adequate remedy at law, that plaintiffs will suffer irreparable injury and of any likelihood of succeeding on the merits. See: Roland Machinery Company v. Dresser Industries, Inc., 749 F.2d 380 (7th Cir. 1984). In fact, if plaintiffs are able to state a cause of action, money damages is clearly an appropriate remedy. There is no irreparable injury, since money damages can redress any injury plaintiffs are able to prove and finally, based

on Downtown Auto Parks, Inc., Supra., it appears unlikely that plaintiffs can succeed on the merits.

WHEREFORE, defendants respectfully request pursuant to Federal Rule of Civil Procedure 12(b)(6), that plaintiffs' Complaint be dismissed with prejudice.

FRATERRIGO, BEST & BERANEK

By:_____
Attorneys for defendants

FRATERRIGO, BEST & BERANEK
55 W. Monroe Street
Suite 3400
Chicago, IL 60603
(312)782-9255

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss was mailed to all counsel of record herein this 3rd day of December, 1993.

_____
Attorney

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

O'HARE TRUCK SERVICE, INC. and JOHN A. GRATZIANNA,	)	
	)	No. 93 C 5860
Plaintiffs,	)	
	)	Judge Shadur
v.	)	
	)	Magistrate Judge Gottschall
CITY OF NORTHLAKE, MAYOR REID PAXSON and POLICE CHIEF SEYMOUR SAPZONIK,	)	
Defendants.	)	

MOTION FOR SUMMARY JUDGMENT

NOW COME the defendants, REID PAXSON and SEYMOUR SAPOZNIK, by and through their attorneys, FRATERRIGO, BEST & BERANEK, and respectfully request this Honorable Court pursuant to Federal Rule of Civil Procedure 56 for the entry of an Order of summary judgment in their favor. In support thereof, defendants state as follows:

1. Defendants, PAXSON and SAPOZNIK, seek summary judgment based on the Doctrine of Qualified Immunity.

2. Under the Doctrine of Qualified Immunity, "public officials performing discretionary functions are protected against suits from damages unless their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known." Doe v. Bobbitt, 881 F.2d 510, 511 (7th Cir. 1989) (citing Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)).

3. To determine whether the right allegedly violated was "clearly established" the right must be identified in a particularized sense with respect to the circumstances of the alleged violation. Warlick v. Cross, 969 F.2d 303, 309 (7th Cir. 1992).

4. The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. Anderson v. Creighton, 483 U.S. 635 (1987).

5. Plaintiff has the burden of showing that the constitutional right was clearly established. Rice v. Burks, 999 F.2d 1172, 1173 (7th Cir. 1993) (citing Rakovich v. Wade, 850 F.2d 1180 (7th Cir.), cert denied 488 U.S. 968 (1988)).

6. At the times alleged in plaintiffs' Complaint

the state of First Amendment and Fourteenth Amendment law is as set forth in Downtown Auto Parks, Inc. v. City of Milwaukee, 938 F.2d 705 (7th Cir. 1991). This case established that an independent contractor did not have First Amendment Claim against a municipality when the municipality terminates a prior business relationship. The case also reiterates that in order to state a due process claim, there must more than a unilateral expectation of a benefit, there must be a legitimate claim of entitlement.

7. At the time defendants are alleged to have terminated plaintiffs' relationship with the CITY OF NORTHLAKE, there is no precedent to suggest doing so could affect plaintiffs' First Amendment rights. As set forth above, an independent contractor has no First Amendment claim against a municipality when services are terminated.

8. With respect to plaintiffs' due process claim, established case law is that plaintiffs must show more than a unilateral expectation of a benefit. However, the decision whether or not to use plaintiffs' towing services was entirely discretionary, per the allegations of the Complaint. As such, plaintiffs had no legitimate claim of entitlement to continue

business relations with the CITY OF NORTHLAKE and therefore, no due process claim.

9. Consequently, in the event plaintiffs' First Amendment or due process claim is recognized in this case, it would mark a departure from established case law. Defendants, PAXSON and SAPOZNIK, are not required to anticipate changes in case law; instead, plaintiffs must demonstrate that their actions violated a clearly established constitutional right. This plaintiffs cannot do. Therefore, defendants are entitled to summary judgment based on the Qualified Immunity Doctrine.

WHEREFORE, defendants, REID PAXSON and SEYMOUR SAPOZNIK, respectfully request this Honorable Court for the entry of an Order of summary judgment in their favor and against plaintiffs.

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PROOF OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss was mailed to all counsel of record herein this 3rd day of December, 1993.

_____

Attorney